

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4154 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SECRETARY, S.T. WORKERS' UNION

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Appearance:

MR SM MEHTA for Petitioner

None present for the Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/08/96

ORAL JUDGEMENT

1. The Corporation has filed this Special Civil Application challenging thereunder the award of the Industrial Tribunal, Ahmedabad dated 30th December, 1983 made in Reference (IT) No.450 of 1980. The operative part of the award reads as under:

There is, therefore, an admission that the workman was not called for interview on 21-1-1973

and that it was through oversight. The workman had therefore, been overlooked and he was not called for interview due to an error made by the Corporation. The Corporation's argument that he was kept at serial no.4 in the selection list and that, therefore, he could not be appointed due to want of post, is not supported by the evidence on record and cannot be accepted. At the same time, considerable time has elapsed since the other 3 persons were selected and appointed. The workman had not made any protest till 1980. Now, the workman has stated that he was given a higher post from 27-2-1977. Considering all the facts and circumstances of the case, I am of the opinion that the ends of justice would be met if the workman concerned is given four advance increments from the date on which he was appointed in the higher post of Art. `B'. These four increments should be given after his pay is fixed in the higher post according to the normal rules. The workman concerned, however, should have no right to claim seniority over the three candidates selected in 1971. I direct accordingly.

2. The only contention made by learned counsel for the petitioner is that the Tribunal has committed serious error in giving of the actual benefit of four grade increments to the workman concerned instead of giving him the notional benefit. It is a case where the selection has been made on the post of Art. B Welder on 22nd January, 1973. Though the workman concerned possessed the eligibility for the said post, he was not called for the interview and three persons have been given the appointment. On 27th February, 1977 the workman concerned has been given the post of Art.`B' Welder, but his claim for the said post was from 22nd January, 1973. He raised industrial dispute, and reference has been made to the Industrial Tribunal on which the award impugned in this Sp. Civil Application has been passed.

3. The learned Tribunal has given the finding that in the interview held on 21st January, 1973, the petitioner was not called. This finding has been given on the basis of admission of the Corporation. Curiously enough, the Corporation has come up with a case before the Tribunal that the name of the workman concerned was there at serial no.4 of the merit list prepared as a result of the interview held on 21st January, 1973. Apparently in view of the aforesaid admission, this defence by the Corporation is incorrect. The Corporation, a statutory body and a State within the

meaning of Art. 12 of the Constitution of India, should not have taken such a wrong defence before the Industrial Tribunal. The respondent-workman was given the post in question from 27th February, 1977. It is not a case of the petitioner that he was not suitable for the said post on 21st January, 1973 or that he was not possessing the requisite qualification. On the contrary, the petitioner has come up with a case that the workman was selected for the post, but his name was at serial no.4 and for want of the post he was not given the appointment. Taking into consideration the totality of the facts of the case, it cannot be said that the Tribunal has committed any illegality or there is some error apparent on the face of the award of the Tribunal which calls for interference of this Court sitting under Art. 227 of the Constitution of India.

4. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

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